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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

ROBIN ZAHRAN and
KAREN ZAHRAN, PETITIONERS,

V.

FRANKENMUTH MUTUAL
INSURANCE COMPANY. RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND APPENDIX

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63 pp

Questions Presented

Did the District Court rulings affirmed by the appeal court in a striking and denying Zahran's filing of their amended complaint, and granting defendant's motion in limini before trial deprives Zahran's of their rights to due process and a fair trial awarded them under the constitution as private citizens.

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PETITION FOR WRIT OF CERTIORARI

Robin Zahran and Karen Zahran, petitions this court for a writ of certiorari to review the decision and order of the Seventh Circuit Court of Appeals, dated 4/25/95. Petition for rehearing denied on 6/23/95 in the matter of Robin Zahran and Karen Zahran v. Frankenmuth Mutual Insurance Company. The decision and orders are appended in this petition.

ORDERS BELOW

1. Order of the U.S. Court of Appeals denying Petition for Rehearing, dated 6/23/95.
2. The Decision and Order of the United States Court of Appeals for the Seventh Circuit dated 4/25/95.
3. Orders of the U.S. District Court dated
   a. 4/8/92 b. 6/24/92
   c. 3/22/93 d. 4/4/93
   e. 5/10/93

JURISDICTION

The order of the Court of Appeals in this case was filed on 4/25/95, and petition for Rehearing was denied on June 23, 1995.

This case arose under 28 U.S.C. 1332 and 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

A. Statement of Facts

Plaintiffs are residents of Oak Brook, Illinois and own a dairy farm in Denmark, Wisconsin.

While insured by defendant, Frankenmuth Insurance, the property was struck by a tornado on 5/24/89.

Negotiation for a total settlement broke down.

As a result of the break down, plaintiffs filed a complaint in January of 1990, in the Northern District of Illinois which ultimately was transferred to the Eastern District of

Wisconsin and assigned to the Honorable Judge Thomas Curran.

After the Complaint was filed and for the first time, defendant filed their Affirmative Defenses and a Counterclaim alleging misrepresentation in the presentations of Zahran's claims, asking for a refund of all monies paid by defendant.

On 3/9/90, defendant and their agents visited the insured property and met with various personnel, including a previous disgruntled employee of plaintiffs.

On 3/18/90, a fire occurred at one of the plaintiff's dwellings occupied by the former disgruntled employee, ten days after defendant's agents visited that person on 3/9/90.

On July 9, 1990, another fire occurred at barn buildings of plaintiffs.

The ex-employee disappeared and it was discovered later that Frankenmuth's agent in town was that person's contact to Frankenmuth.

Again, settlement negotiations for the loss damage caused by fires between plaintiffs and defendants broke down.

On November 1, 1990, defendant paid $99,995, as their estimate of the loss caused by the fire, pursuant to the policy which they already declared void (six months earlier) in April of 1990, through the alleged allegation that Zahrans violated policy provisions of misrepresentation.

Immediately after making the above payment, defendant amended their answers in the tornado complaint litigation, alleging further misrepresentation by Zahrans for receiving payments that defendant voluntarily made to plaintiffs for losses sustained by plaintiffs due to the fires.

No agreement regarding the extent of damage by fires was reached between Zahrans and Frankenmuth and as a result, plaintiffs filed their Complaint in the Norther District of IL.

for breach of contract, bad faith, and violation of Illinois statue. The Complaint was transferred to the Eastern District of Wisconsin upon defendant's motion to transfer.

The district court denied consolidations of both cases upon the transfer of the second case to the same judge.

At the tornado trial, the defendant used the fire occurrences as a pretext to insinuate and infer arson by Zahrans and implied misrepresentation on the application for insurance by Zahrans.

The jury returned a verdict that Zahrans violated the policy provision of misrepresentation, pursuant to a special verdict form submitted to the jury without the knowledge of plaintiff's attorney.

Not knowing the extent of what they were accused of by Frankenmuth, Zahrans were dumbfounded, shocked, and dismayed by the jury verdict, and questioned their attorneys as how in

the world could a jury come up with such a verdict. The attorneys reply was, " The judge and the jury think that you started the fire."

Pursuant to what happened, plaintiffs aggressively moved to find, investigate and check every detail of both the tornado and fire circumstances, litigation papers, and court filings and took on their own representation to pursue and find the truth.

Plaintiffs discovered evidence pointing the cause of the fires to Frankenmuth's agents and to the complicity of Frankenmuth's employees in these fires. Zahrans further discovered forged and tampered with documents by defendant and their attorney. These forged documents were used as evidence of misrepresentation in Frankenmuth's case with the knowledge by Frankenmuth and its lawyers that these documents were forged and tempered with by defendant.

On April 8, 1992, at a status hearing, the district court ordered that the parties have

leave of court to serve and file without motion further pleadings and to join or amend pleadings, on or before May 1, 1992.

Plaintiffs filed their pro-se appearance replacing their attorney and filed their Amended Complaint reflecting the facts they discovered in their investigations surrounding the fires and falsehood of Frankenmuth's entire fabricated allegations and falsifying of documents.

Plaintiffs mailed their pro-se appearance form and the Amended Complaint to the clerk of the courts of the U.S. District Court for the Eastern District of Wisconsin at 517 East Wisconsin Ave. in Milwaukee, WI. on April 29, 1992, via U.S. mail pre-paid postage along with a proof of service and affidavit of mailing.

Copies of same were mailed to Honorable Judge Curran, presiding Judge at the same address. Same were also sent to both Frankenmuth and Cleary Building as named defendants.

Both Defendants received their Amended Complaints and both filed answers to the new amended complaint with no objection.

To Zahrans surprise, the district judge ordered the Amended Complaint and defendants' answers stricken from the record, reasoning that the caption of the Amended Complaint was wrong as it read, "In the Northern District of Illinois" rather than, "In the Eastern District of Wisconsin."

Plaintiffs' names were on the mailed envelopes and plaintiffs' and defendant's names were on the heading of the complaint. Their names were known to both the judge's staff and to the clerk of the courts' staff.

Neither the clerk of the district court nor the office of the district judge returned the amended complaint. No harm nor delay was done and both defendants received their amended complaint and answered them.

Plaintiffs, through a motion, re-filed their

Amended Complaint, correcting the typing error on the heading but the court denied Zahrans' filing.

Plaintiffs made a motion on 5/29/92 for reconsideration and that too was denied by Judge Curran on 6/2/92. Two (2) additional attempts by the plaintiffs to amend their complaint upon discovery of new evidence were also denied immediately. Zahrans again motioned for leave to amend complaint upon further discovery and again, the judge denied.

Zahrans were forced to prosecute their complaint without all the facts, evidence they discovered through investigation, and all necessary parties. The judge would not allow any evidence to be introduced regarding the circumstances of the fires stating, "We will not find out who burned your property," neither the introduction of evidence of the forged documents by Frankenmuth and its agents.

Judge Curran was determined that Robin Zahran will not succeed in prosecuting his claims

against Frankenmuth, neither will he allow him to have his day in court. Judge Curran made sure that Zahrans did not get justice by denying them a fair trial, depriving them of due process.

REASONS FOR GRANTING THE WRIT

1. Petitioners were deprived of their constitutional rights to due process of law and their right to a fair trail resulting in miscarriage of justice caused by the district court's bias evidenced by specific rulings sanctioned by the appeal court, calling for this court to exercise its constitutional power of supervision over lower courts.

ARGUMENT

I.

The court should grant the petition to rectify violations of Zahrans' rights to due process, violated by the lower courts.

The appeal court misapprehended the facts of

plaintiffs' case. The Amended Complaint was received by the clerk of the courts and by Judge Curran's staff.

No harm or delay or prejudice was done to defendants or to the system of the administration of justice by having a typed error on the heading to justify dismissal.

The names of plaintiffs and defendants are clearly visible as soon as anyone, with ability to read, opens the envelope that the Amended Complaint was in.

The clerk of the courts and the district judge did not return the Amended Complaint to Zahrans, neither did they notify them nor did they forward the Amended Complaint to the Northern District of Illinois.

The court, on its own motion, ordered the Amended Complaint and defendant's answers stricken from the record without hearing. All plaintiffs' attempts to have their Amended Complaint filed where denied.

The district court, upon reading the Amended Complaint, became well aware of facts that came to surface after the thorough investigations made by Zahrans. These facts plead, in the Amended Complaint, would have proved the jury verdict rendered in the tornado litigation, which was affirmed by the district judge to be without basis and clearly erroneous and fraudulently begotten.

Federal Courts held that it should be essential that communications between district court and parties to the action as well as all rulings effecting procedural rights of parties be reflected on docket and contained in the record to afford complete review by court of appeals. Brown v. Crawford County, B.A. 960 F 2d 1002 (C.A.11).

The court twice directed the clerk to strike the copies of the Amended Complaint from the record. The court of appeals must make independent determination as to the rule of law,

state highest court is likely to adopt in similar situations, D. Luglio v. New England Insurance Co., 959 F 2d 355. Here the district court made sure that the appeal court does not see the Amended Complaint.

The appeal court ruling that the lower court did not abuse its discretion in denying plaintiff's filing of the Amended Complaint is out of place and in violation of Rule 15 as the date of filing of the Amended Complaint without leave of court did not pass.

No reasonable person would have adopted the district court decision. In this instant case, the final amending dates were not even set. The trial date had just been set for the following year, no discovery had been taken by either side, and pro-se plaintiffs just filed their appearance.

This case is not about a matter of managing litigation progress by the district court but about the determination of the district judge to

make Zahrans lose no matter what and that is where their rights to due process have been violated and denied.

Zahrans asked the district judge to rescue himself from this case because of his prejudiced views of Zahran's in the earlier case and he refused.

Plaintiffs researched Case # 90-C-337 litigated in front of the same judge, and found that amending pleadings and adding names of witnesses and experts were freely given by the same court to defendant's attorneys. Judge Curran's statement in open court was that, "We have to keep a viable insurance industry."

It is obviously clear where a district judge wants to deprive a person of due process and substantial justice. He could and had the capacity to do so, as happened in this case. That is why we have reviewing courts to protect from such abuses by the lower courts, especially in this situation given the circumstances of the

issues. The appeal court should not be allowed to take the easy way out by taking a judge's controversial decision in spite of established laws, rules, and Supreme Court decisions and mandates.

Basic rules of fairness as well as Federal Rules of Civil Procedures require that plaintiffs should have had the opportunity to amend their complaint to request equitable relief. Health Cost Controls v. Richard Skinner, 94-1433 (C.A. 7).

The court did not even hold a hearing to determine if amending the complaint would have cured any defective pleadings and if any party would sustain prejudice. The amendment was timely and no previous opportunity had been given to amend pleadings in front of Judge Curran.

The outright refusal of the court to grant plaintiffs leave to amend is not an exercise of discretion by the court but is abuse of discretion and civil procedures. Rule 15 (a) of

U.S.C.A.

This court held in Foman v. Davis, 83 S Ct. 227 371 U.S. 178 9 L Ed 2d 222, "Leave to amend shall be freely given when justice so require and is a mandate to be heeded."

Justice could not have been achieved in this case neither delivered by the justice system without Zahrans' Amended Complaint and the judge knew it, as was obvious in his orders.

This court stated liberality is to be exercised in allowing amendment of pleadings to achieve end of justice. F.R.C.P., U.S.C.A., Gillispie v. U.S. Steel, 85 S. Ct 308 379 U.S. 148 13 L Ed 2d 199.

Judge Curran made sure that Zahrans never started the road to achieve any beginning of justice, never mind achieving the end of justice.

F.R.C.P. states that all persons materially interested in the result of the suit ought to be made parties so that the court may do complete justice. N.L.R.B. v. Local Union, 79 A.F.L.-

C.I.O., 92 S. Ct. 350 404 U.S. 116 30 L Ed 312 on remand 461 F 2d 1235 149 U.S. C App. D.C.

It's contrary to the spirit of F.R.C.P., Rule 1 of U.S.C. code for a decision on merits to be avoided on basis of mere technicalities.

These declared decisions and mandates by this court were violated by the lower courts, calling for the interference and supervision of this court to correct the lower court's abuses of a citizen's right to due process.

CONCLUSION

IN CONCLUSION, petitioners for the foregoing reasons stated in their petition pray this court to grant their petition for writ of certiorari.

Respectfully submitted,

Robin Zahran

Karen Zahran

Dated: Sept. 15, 1995